



IN REPLY REFER TO:

## United States Department of the Interior

### FISH AND WILDLIFE SERVICE

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March 30, 2007

Curtis Flakes  
Inland Environment Team  
Planning Environmental Division  
Mobile District, Corps of Engineers  
P.O. Box 2288  
Mobile, Alabama 36628-0001

Dear Mr. Flakes:

Your letter dated January 31, 2007, which transmitted the "Jim Woodruff Dam Interim Operations (IOP) Plan Biological Opinion (BO) Annual Report" for 2006, requested delaying the completion date for actions required under reasonable and prudent measures 4 and 5 (RPM4 and RPM5) of our September 5, 2006, BO. RPM4 calls for evaluating the current status of sediment transport and channel stability in the Apalachicola River as it relates to the distribution of listed mussels and their vulnerability to low-flow conditions. RPM5 calls for, among other things, developing a plan to monitor listed mussels in the area affected by the IOP. The BO specifies March 30, 2007, as the date for completion of both the RPM4 and RPM5 actions. The BO also includes a provision that the conduct of studies in the RPMs are subject to the availability of funds by Congress; that the Corps will exercise its best efforts to secure funding. You have informed the Fish and Wildlife Service (Service) that the Corps has been operating this entire fiscal year under Continuing Resolution Authority (CRA), which has limited your ability to initiate new work and contracts and delayed the ability of the Corps to initiate these actions. However, you state that you anticipate receiving sufficient funds in the next few weeks to initiate and complete the efforts related to the RPM4 and RPM5 activities this fiscal year. Therefore, your letter requests extending the completion date to August 30, 2007. This letter is our response to your request.

The purpose of an RPM is to minimize the impacts of incidental take. As we explained in the BO, we believe that take of listed mussels associated with the IOP is most likely limited to certain areas of channel instability. The overlapping purpose of RPM4 and RPM5 is to compile information about the threat of continuing channel instability to listed mussel populations that may lead to additional ways to minimize take. This information would be available to assist in developing possible future adaptive modifications to the IOP in accordance with the terms and conditions of RPM1, Adaptive Management. When we completed the BO last fall, the date March 30, 2007, was our agencies' mutual best estimate of a feasible completion date for evaluating channel stability with existing information and for developing a mussels monitoring

plan, assuming funds to initiate these efforts would be immediately available. Failing to complete these actions by March 30 does not alter the conclusions of the BO or our estimate of incidental take associated with the IOP. We acknowledge that an RPM cannot require actions inconsistent with an agency's authority and that the CRA has constrained your spending authority. Nevertheless, last year's unusual exposure of mussel beds in the vicinity of Wewahitchka was a clear sign of habitat conditions in transition. RPM4 and RPM5 are intended to assist us in understanding and dealing with these changing conditions. Therefore, we believe the Corps should demonstrate progress on meeting the terms of RPM4 and RPM5 as soon as practicable.

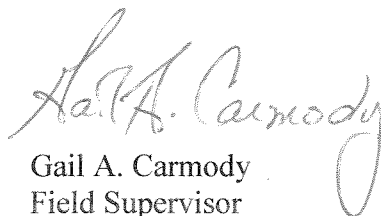
We agree to delay the completion date under RPM4 and RMP5 to August 30, 2007, as you have requested; however, we ask that you coordinate with us on a work schedule that could accelerate the completion of these tasks. Please include in this schedule the steps that you have already taken and can take in the next 30 days to ensure that the scientists you have selected for this work hit the ground running. If you have not already done so, please compile all appropriate information to give to them as soon as possible and organize conference calls to begin the detailed work scoping process in advance of any meetings or site visits. We are available to assist with prioritizing such information and to participate in calls with your scientists.

We had expected to begin implementing a comprehensive mussels monitoring plan in the spring of 2007, and now recognize that is not possible based on funding constraints. However, we ask you to consider providing for some mussel sampling surveys in the scope of work for developing the mussels monitoring plan. Should basin inflow levels fall below 10,000 cfs this summer, it will be useful to know the potential risk of exposure to listed mussels located in vulnerable microhabitats, and this information could be used to assist in developing a more comprehensive monitoring plan.

We note that the BO states that "[i]n the event the necessary funding is not obtained to accomplish the RPM activities by the dates established, the Corps will reinitiate consultation with USFWS." As discussed above, our review of your proposal to extend these deadlines indicates that this extension does not alter the conclusions of the BO or increase the estimate of incidental take associated with the operations described in the IOP. As such, this exchange of letters fulfills the Corps' obligation to reinitiate consultation, and a new formal consultation is not required.

Please contact Jerry Ziewitz at extension 223 for coordinating with us on a schedule for completing the channel stability evaluation and the mussels monitoring plan. We look forward to working with you on these actions.

Sincerely yours,

  
Gail A. Carmody  
Field Supervisor